

AMENDED IN ASSEMBLY MAY 22, 2008

AMENDED IN ASSEMBLY MAY 1, 2008

AMENDED IN ASSEMBLY APRIL 28, 2008

AMENDED IN ASSEMBLY APRIL 17, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2604**

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**Introduced by Assembly Member Torrico**

February 22, 2008

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An act to amend Section 66007 of the Government Code, relating to land use.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2604, as amended, Torrico. Developer fees.

Existing law prohibits a local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities from requiring the payment of those fees or charges until the date of the final inspection or the date the certificate of occupancy is issued, whichever occurs first, with specified exceptions. If the fee or charge is not fully paid prior to issuance of a building permit, existing law authorizes the local agency issuing the building permit to require the property owner, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge within the specified time.

This bill would ~~create, until January 1, 2012, another exception by prohibiting a city, county, or city and county that imposes fees on a residential development for the construction of public facilities, as defined, from requiring the payment of those fees for residential units~~

~~until the date the certificate of occupancy is issued, except for a fee necessary to reimburse the city, county, or city and county for funds it has expended, or will expend within 12 months after issuing the residential building permit, for public facilities related to the residential development~~ *encourage local agencies to work with local developers to defer the collection of fees when economic circumstances create a serious obstacle to payment prior to the date the certificate of occupancy is issued, the date of the final inspection, or the close of escrow.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*

3     *(a) The deferral of developer fees can be a significant factor*  
4     *regarding whether it is economically feasible to start construction*  
5     *on a residential development.*

6     *(b) Local agencies can benefit from the deferral of developer*  
7     *fees through all of the following:*

8         *(1) Accelerating increases of property taxes due to the higher*  
9         *property value of improved land compared to unimproved land.*

10        *(2) The collection of sales taxes on building materials by the*  
11        *local agency in which the new home is built.*

12        *(3) Employment of construction personnel and spending in the*  
13        *local economy from those workers.*

14        *(4) The ripple effect caused by new home purchasers when they*  
15        *seek to furnish their new home.*

16     *(c) Local agencies may balance these benefits against public*  
17     *needs, including all of the following:*

18         *(1) The timely need for new facilities and infrastructure.*

19         *(2) Accounting for preconstruction costs, such as design and*  
20         *environmental review related to infrastructure and facilities.*

21         *(3) Potential increased costs of accounting for developer fee*  
22         *deferrals.*

23         *(4) The overall need to maintain a healthy public treasury.*

24     ~~SECTION 1.~~

25     *SEC. 2. Section 66007 of the Government Code is amended*  
26     *to read:*

1     66007. (a) Except as otherwise provided in subdivisions (b)  
2 and (g), any local agency that imposes any fees or charges on a  
3 residential development for the construction of public  
4 improvements or facilities shall not require the payment of those  
5 fees or charges, notwithstanding any other provision of law, until  
6 the date of the final inspection, or the date the certificate of  
7 occupancy is issued, whichever occurs first. However, utility  
8 service fees may be collected at the time an application for utility  
9 service is received. If the residential development contains more  
10 than one dwelling, the local agency may determine whether the  
11 fees or charges shall be paid on a pro rata basis for each dwelling  
12 when it receives its final inspection or certificate of occupancy,  
13 whichever occurs first; on a pro rata basis when a certain  
14 percentage of the dwellings have received their final inspection or  
15 certificate of occupancy, whichever occurs first; or on a lump-sum  
16 basis when the first dwelling in the development receives its final  
17 inspection or certificate of occupancy, whichever occurs first.

18     (b) (1) Notwithstanding subdivision (a), the local agency may  
19 require the payment of those fees or charges at an earlier time if  
20 (A) the local agency determines that the fees or charges will be  
21 collected for public improvements or facilities for which an account  
22 has been established and funds appropriated and for which the  
23 local agency has adopted a proposed construction schedule or plan  
24 prior to final inspection or issuance of the certificate of occupancy  
25 or (B) the fees or charges are to reimburse the local agency for  
26 expenditures previously made. "Appropriated," as used in this  
27 subdivision, means authorization by the governing body of the  
28 local agency for which the fee is collected to make expenditures  
29 and incur obligations for specific purposes.

30     (2) (A) Paragraph (1) does not apply to units reserved for  
31 occupancy by lower income households included in a residential  
32 development proposed by a nonprofit housing developer in which  
33 at least 49 percent of the total units are reserved for occupancy by  
34 lower income households, as defined in Section 50079.5 of the  
35 Health and Safety Code, at an affordable rent, as defined in Section  
36 50053 of the Health and Safety Code. In addition to the contract  
37 that may be required under subdivision (c), a city, county, or city  
38 and county may require the posting of a performance bond or a  
39 letter of credit from a federally insured, recognized depository  
40 institution to guarantee payment of any fees or charges that are

1 subject to this paragraph. Fees and charges exempted from  
2 paragraph (1) under this paragraph shall become immediately due  
3 and payable when the residential development no longer meets  
4 the requirements of this paragraph.

5 (B) The exception provided in subparagraph (A) does not apply  
6 to fees and charges levied pursuant to Chapter 6 (commencing  
7 with Section 17620) of Part 10.5 of Division 1 of Title 1 of the  
8 Education Code.

9 (c) (1) If any fee or charge specified in subdivision (a) is not  
10 fully paid prior to issuance of a building permit for construction  
11 of any portion of the residential development encumbered thereby,  
12 the local agency issuing the building permit may require the  
13 property owner, or lessee if the lessee's interest appears of record,  
14 as a condition of issuance of the building permit, to execute a  
15 contract to pay the fee or charge, or applicable portion thereof,  
16 within the time specified in subdivision (a). If the fee or charge is  
17 prorated pursuant to subdivision (a), the obligation under the  
18 contract shall be similarly prorated.

19 (2) The obligation to pay the fee or charge shall inure to the  
20 benefit of, and be enforceable by, the local agency that imposed  
21 the fee or charge, regardless of whether it is a party to the contract.  
22 The contract shall contain a legal description of the property  
23 affected, shall be recorded in the office of the county recorder of  
24 the county and, from the date of recordation, shall constitute a lien  
25 for the payment of the fee or charge, which shall be enforceable  
26 against successors in interest to the property owner or lessee at the  
27 time of issuance of the building permit. The contract shall be  
28 recorded in the grantor-grantee index in the name of the public  
29 agency issuing the building permit as grantee and in the name of  
30 the property owner or lessee as grantor. The local agency shall  
31 record a release of the obligation, containing a legal description  
32 of the property, in the event the obligation is paid in full, or a partial  
33 release in the event the fee or charge is prorated pursuant to  
34 subdivision (a).

35 (3) The contract may require the property owner or lessee to  
36 provide appropriate notification of the opening of any escrow for  
37 the sale of the property for which the building permit was issued  
38 and to provide in the escrow instructions that the fee or charge be  
39 paid to the local agency imposing the same from the sale proceeds  
40 in escrow prior to disbursing proceeds to the seller.

1 (d) This section applies only to fees collected by a local agency  
2 to fund the construction of public improvements or facilities. It  
3 does not apply to fees collected to cover the cost of code  
4 enforcement or inspection services, or to other fees collected to  
5 pay for the cost of enforcement of local ordinances or state law.

6 (e) “Final inspection” or “certificate of occupancy,” as used in  
7 this section, have the same meaning as described in Sections 305  
8 and 307 of the Uniform Building Code, International Conference  
9 of Building Officials, 1985 edition.

10 (f) Methods of complying with the requirement in subdivision  
11 (b) that a proposed construction schedule or plan be adopted,  
12 include, but are not limited to, (1) the adoption of the capital  
13 improvement plan described in Section 66002, or (2) the submittal  
14 of a five-year plan for construction and rehabilitation of school  
15 facilities pursuant to subdivision (c) of Section 17017.5 of the  
16 Education Code.

17 ~~(g) Notwithstanding any other provision of law, until January~~  
18 ~~1, 2012, any city, county, or city and county that imposes fees on~~  
19 ~~a residential development for the construction of public facilities,~~  
20 ~~as defined in Section 66000, shall not require the payment of those~~  
21 ~~fees for residential units until the date the certificate of occupancy~~  
22 ~~is issued. This subdivision does not require a city, county, or city~~  
23 ~~and county to defer the collection of a fee if that fee is necessary~~  
24 ~~to reimburse the city, county, or city and county for funds it has~~  
25 ~~expended, or will expend within 12 months after issuing the~~  
26 ~~residential building permit, for the construction of public facilities~~  
27 ~~reasonably related to the residential development pursuant to~~  
28 ~~Section 66001. The fees not deferred shall be paid when the~~  
29 ~~building permit is issued. Every city, county, or city and county~~  
30 ~~is encouraged, but is not required, to defer the collection of all fees~~  
31 ~~until close of escrow.~~

32 *(g) Local agencies are encouraged to work with local developers*  
33 *to defer the collection of fees when economic circumstances create*  
34 *a serious obstacle to payment prior to the date the certificate of*  
35 *occupancy is issued, the date of the final inspection, or the close*  
36 *of escrow.*